

**Interagency Task Force
on Employee
Misclassification**

Tuesday, July 15, 2008
2:00 P.M.
Unemployment Insurance
Agency – Problem
Resolution Office
Large Conference Room
614 Johnson St.
Saginaw, MI 48607

MINUTES

Task Force Attendees: Lt. Governor John D. Cherry Jr., Keith W. Cooley (Chair), Stephen Geskey, Chris Peretto, Jack Finn

The Public Hearing was called to order.

Opening Remarks

Director Cooley welcomed everyone to one of the public hearings being held across the state around the issue of misclassification of wages and indicated the agenda provides an opportunity to talk with you about and get a foundation on what misclassification is all about and to hear from you. Director Cooley introduced Lt. Governor John Cherry for opening remarks.

Lt. Governor Cherry thanked Director Cooley for the introduction. "It is a pleasure to be able to join you this afternoon. This Interagency Task Force was established by a Gubernatorial Executive Order and it was to look at this problem of misclassification. Misclassification is the inappropriate categorization of someone who works for another as a sub-contractor versus an employee. The difference is that the employee/employer relationship is very tightly governed by state and federal law and there are all sorts of obligations that an employer has when they have a relationship with an employee in the form of withholding taxes, federal, state and municipal income taxes, social security taxes as well as a responsibility to provide unemployment coverage through insurance to the state agency and then private workers' compensation insurance not to mention other benefits that may be accorded to an employee by the employer such as health care, retirement and disability. When someone is misclassified all of those obligations to withhold are not met then the employer enjoys a competitive advantage over employers who may play by the rules that meet their obligations of state and federal law. Additionally employees suffer because they don't have access to benefits and tax benefits that they would have if they were appropriately treated. For state government, we lose tax revenue. Consequently our ability to have a solvent system is impacted by misclassification. The problem is that when you talk about income tax withholding, worker's compensation, unemployment compensation, wage and hours issues, those are all dealt with by different agencies, so enforcement becomes a real issue. What the Governor had hoped is through these hearings and the work of the task force we would be able to identify a number of strategies to make sure that misclassification isn't the kind of problem in the state that we suspect that it might be. Director Cooley is chairing the task force and after conducting these hearings will be responsible for reporting to the Governor." Lt. Governor Cherry thanked everyone for coming to the hearing and thanked Director Cooley and other task force members for the diligent way in which they are approaching this responsibility. He said hopefully in the end we'll have a more effective way to deal with misclassification as it occurs here in the State of Michigan.

Director Cooley thanked the Lt. Governor and indicated that the Lt. Governor has followed the task force half way across Michigan to be in place so that all of those who come to visit with us at the hearings understand just how important this issue is.

Presentation on Employee Misclassification

A 10 minute Power Point presentation was shown highlighting Executive Order 2008-1 on Employee Misclassification, Duties of the Task Force Committees, Scheduling, Governor Granholm's Charge to the Task Force, Reasons Why Employee Misclassification is Harmful, Economic Reality Test and Contact Information. To view the presentation, go to www.michigan.gov/dleg and click on the link under "Spotlight."

Public Comments

Director Cooley – "This is the time when we typically hold open an opportunity for any of the public to give public testimony for us to hear. If there are any you who would like to come forward with any comments, suggestions or recommendations to go on public record, please feel free to step forward."

■ **Leon Turnwald, Michigan Regional Council of Carpenters (MRCC)**

Michigan is a very prosperous state. The construction business is such a business that is not like being in a factory setting where there is time to lock onto the product and lock onto the workforce. In order to make this thing successful we have to be smarter about the way we are spending our money and the way we spend the money again is to get out front. If that contractor is bidding that job, it's not bidding because it is a right of his, it should be because it's a privilege. He should be privileged to work on these jobs, whether it is school work or state highway work, the e-business work that the infrastructure of this great state depends on it. This is the thing that our children will be traveling on in the years to come. But whether they are going for educational purposes and everything else, this is a privilege for that contractor to be there so when they are bidding this, they are not just bringing this workforce up and saying well I'm going to hire six people out in the community because that is what I'm doing. I really help others and really want to get these people on board. He already has the money, knows where he is going to get these people from and how he is going to get this job. If he's got this in mind he should be sharing with us who his workforce is. If he is going to have independent contractors before that job starts he should have a list of who they are. If he's making this up as he's going, there should be penalties in there. Again, so we are looking at it before the job starts, when the job starts we don't have time to make the corrections. Who are these people? Are they behind in child support? Are they this are they that? Are they training to do this job? This is a carpenter's job and when it was estimated for him to do the job he was going to have twenty carpenters. When he shows up he has twenty laborers. He's not doing his job, he's not bidding it the way it was supposed to be bid. But again, we have to get out in front of the problem. Chasing it around and being a policeman at the end it's just not cost effective. For every dollar hopefully we would save by catching them we would have probably have spent ten dollars just chasing them. But again if we were out front, that's where we need to be. In the construction business these people have to understand that this is a privilege not a right. I mean this is the taxpayer's money and it needs to be protected and that's the best way to do it.

Director Cooley – Thank you for your vigilance and your comments.

Leon Turnwald – We chase them as far as they can go and it gets to be a very daunting task and I know they are small but sometimes it becomes years after the fact before we finally catch up with them. I know we've run some of these contractors out of business after the fact. But the reward for the taxpayers, I don't know if it's there because we have expended so much money doing this. We just keep doing, working inside the law, what we've got to do but the legislators have got to understand that we need help with this law to help us do our job".

Director Cooley – I kind of like the thought of where contractors secure the workers before the job starts. Is that a practice that you see often among some of the folks that are living true to the law?

Leon Turnwald – “They wouldn’t have a problem with that because they have a known workforce. They’d know who they are and if they are going to come and bid this work while somebody’s buying on child support, or if there is a convicted felon or something else, they should know who these people are. Of course you can be hiring people as the process goes and you have other subcontractors but again these subcontractors can be known at the outset. There could be a fine building, and if it just comes up and then you then don’t notify, but again you have these changes that come into the dynamics of the workforce. Again there could be something built in to take care of that. But again chasing the problem after it occurs is just not cost effective for anyone.”

Director Cooley – It seems to me that what you are describing sounds very doable as it relates to work that’s coming out of the public sector. We in the state are in a position to have certain requirements on ourselves and municipalities particularly when it comes to contracting particularly the U.I.’s and the state’s dollars. The private entities I don’t know to what extent we are able to regulate that.”

Leon Turnwald – There wouldn’t but maybe there could be some cost incentive built into the law for other people to say that we are paying on their states’ back.

Director Cooley – “I would like to get a sense of some of the problems that you’ve had as you run across this and try to have enforcement brought on these issues. Would you maybe give us a couple of examples or so?”

Leon Turnwald – “Initially the way it may start is we have a construction manager that goes to a university or whatever and looks at the job they are going to do and we’ll say the job is going to cost five million dollars, so they shop it to about five construction managers and they are going to put it out on bid. Well there’s a sales pitch that goes on there and everything and maybe they are going to have to beat the subcontractors bid down just a little bit to make it fit into this five million dollars or maybe not. Anyways contractor “A” succeeds hands up in getting the job. They’ll do away with let’s say the carpeting if the legitimate contractor is going to turn in the hours and everything and well we’ll kick his bid out and we’ll do an independent contractor. Now all these guys fly in at night and come in there and lay the carpet by the square footage and are gone. These people are 1099’s and they already know what the carpeting is supposed to cost. The carpeting is on this job is supposed to cost \$200,000 and where the rest of the money goes is unknown to the colleges because we just changed the bid. By the time we find out about it we turn it in because we’ve got to track these people. Jack’s office is swamped and by the time they get back, Joe Blow is gone. He’s hiding from child support, he’s hiding from this, he is out of the sector and he is gone.”

Leon Turnwald – “In one particular case at CMU, Evil’s Construction (company name is not completely clear), they got the carpenter’s package and then we started chasing them down after about a year. Low and behold they had as many as thirty to forty carpenters on the job and when we finally got them pinned down they had one carpenter on the job. They got all of their carpenters from Heritage Construction Group which was owned by Evil but it was another company so then we had to go back and now we had to chase Heritage. In the meantime Evil’s goes out of business so they don’t have a contract but it is the same person and Jack’s chasing Heritage now. Where is the money going to come from, where is the money? Evil’s is out of business and Evil’s can’t pay Heritage to pay the guys now. We have someone in Rockford who actually stood up to the plate and started paying certain people back from Heritage Construction Group but now they have stopped even paying them. This was a high rise dormitory and the total job was probably over thirty million dollars. How much money did the state not get back? Untold amounts. These guys got it because they knew what the bid had to be, they knew where they had to be in the bidding process and they just come down here and make the difference out by cheating. One guy, two people put the money in their pocket. Everybody else will get more money than they normally do without paying taxes and they’re gone. I know you don’t want them in your neighborhood and I don’t want them in mine. Again, it is a privilege to be able to work on these jobs because that’s our money, that’s our tax money.”

Neil Zechman – “The people on the job, first of all it’s a smaller community, people know what’s going on, we know what’s going on. It sounds though like before we have a chance to do anything about it they’re in and they’ve done the job and they’re gone. Is there sort of a word of mouth that can help the state? I realize that you want proactivity, but we have the stick line, is there a way we could be clued in early in the process where we can get people out?”

Leon Turnwald – “It is hard for your people to get through the minutiae of the people calling it in and everything on what’s going on and then the documentation isn’t there and there is an investigative process that has to take place and everything. But if the documentation is there as far as the bidding process then everything else would have to be there. It might be a hard learning curve at first but after a while the documentation will eliminate the fly by nights. It’s just like if the state would have something in the bonding let’s say this is a fifty million dollar dormitory job, the contractors that are bidding this job have to put up a bond for fifty million dollars to construct it. After they’re done with the construction everybody signs off they and don’t have that bond anymore. If there was something in the bidding process to say that bond has to stay in effect for no problems for the next two years, that construction company has to buy that bond for another two years after that, that eliminates a lot of people because they’re going to say we’re not going to be paying for that bond for problems that come up after construction. That may be construed to a better construction problem or not they’re just going to say we’re okay, they signed it off, let them figure it out and then we’ll complain about it later, then we’ll split the difference. But, if there was a way just to keep these guys tacked into that.”

Director Cooley – “It seems like there are two different situations you are describing, I’m trying to get it clear in my mind. One is that there is a John Doe on a construction site that someone suspects is there as a subcontractor and if they make a complaint, all of a sudden John Doe is not there anymore. Is that correct?”

Leon Turnwald – “Sometimes, but sometimes though they legitimately believe that they are employees and the job has run over now, the people are no longer employees, these people just became subcontractors. I’m going to make \$100,000 you guys altogether are only going to make \$50,000. I’m going to divide it up among you guys, that was your bid, see you later.”

Director Cooley – “One moment they are one thing and the next moment they are another thing.”

Leon Turnwald – “The thing is they were not legitimate subcontractors to start with. If they were, those things would be on file and we would have a record of it.”

Director Cooley – “I can see where some people are victimized by that. You’re told today you’re a subcontractor or else you can expect to be gone because there is no more money and that’s what’s going to be done. Are there those who understand the system and coming into it knowing that they’re scamming the system? I mean look, I’d rather be an employee, but if this is the only way I can get a job I don’t care?”

Leon Turnwald – “Absolutely, yes both ways certainly but again it might be as simple as you’re bidding this job June 1st, 2008, give us a list of all the people that were your subcontractors and your employees for the last year. This guy was an independent contractor last year, no he wasn’t. You turned him in, you said he wasn’t. He is not licensed, it never happened, you made it up. Well he told me he was. Why would he tell you that?”

Director Cooley – “So back up here. You’re starting to ring some bells here. We license contractors don’t we as a state? So there are people showing up on these jobs as subcontractors who are not licensed?”

Leon Turnwald – “The original contractor who bid this job, he is not going to be bidding this job with a shadow workforce unless that’s what he’s bidding it with and he really knew that is what he is going to do. If he had a legitimate workforce in place he would not have any problem turning over any information as far as who your subcontractors are who you are dealing with what’s going on. If he was thinking I’m just going to do this on the sly, I know the job is \$100,000 it’s supposed to be done this way, everybody else is going to bid and come in under \$100,000, I’m going to do it for \$75,000. They’re going to love me and I’m going to make it happen despite the shoddy workmanship. In the end we are trying to be active instead of proactive.”

Neil Zechman – “The general contractor may not be in on it but may be aware in time of what’s going on as well but the main culprit here would be the subcontractor?”

Leon Turnwald – “More times than not it is the general manager or the construction manager on the job.”

Cheryl Cornellier – “The building permits that are issued for the construction are they not all filed with the state or are they filed in the different counties or cities?”

Leon Turnwald – “I think only if it is a state job, they are issued by the state.”

Director Cooley – “It is a struggle and clearly you want to believe they will enforce it if appropriate.”

Leon Turnwald – “If they have the ability to handle it, some of the municipalities have been trying to catch them before they all scurry. Catch them when they come up and when they walk in the front door.”

Cheryl Cornellier – “When someone files for a building permit, do they have to show that they are licensed?”

Leon Turnwald – “Depending on the nature of the work, yes. My limited background in that matter, they have to show that they are licensed. It is not necessarily saying that they are qualified and can do that work.”

Director Cooley – “Are there others that would like to make a public comment?”

- **Mark Bauer, International Brotherhood of Electrical Workers (IBEW) Local 692**
“In the electrical industry you have to be a licensed journeyman, master or apprentice to be on the job. We’re seeing more and more times especially on prevailing rates, these contractors are classifying them as laborers. There is no work for laborers or very little on an electrical construction job for a licensed craft. Wage & Hour can’t chase these people down, they can’t determine what they’re doing and that’s not their job and they don’t have the time. By the time we do that, usually the project is done and we’re now trying to go back and some of these contractors are out of business and the state is trying to get the prevailing rate money back from some of those workers. Another thing is they will use a laborer because their pay rate is less, so they cheat on that labor. Their workmans’ comp is a lot lower than an iron worker, or electrician or an operating engineer or a rigger or something like that. We are seeing more and more temp agencies out there. A contractor will get employees from temp agencies and they’re not paying the unemployment on them because they are not their employees. They don’t have to pay the workers’ comp because they are not their employees. They’re the employees of temp agencies. The temp agency pays their unemployment, their worker’s comp., pays their wages so they’re working on that job and not an employee of somebody on that job. So they are being unscrupulous contractors underbidding, and as you said Lt. Governor, having an unfair advantage in the bidding process by using really non workers or non employed workers on that job. If you listened to Leon these are the points I’d like to add.”

Closing Remarks

Director Cooley – “In addition to Mr. Turnwald and Mr. Bauer we have Jeff Sawyer of the Operating Engineers and Darrell Maciag of the Carpenters’s Local 706. I appreciate you coming out. We really hope that you will pass the word on to your peers and friends that we are serious about this and if you see misclassification on the worksite give us a call or use the tip number and continue to help us because you’ve been helping all along. Continue to help us to figure out how to do the best job we can with this issue of misclassification. I think as we put out a concerted effort and especially if we could do some of the things we try to do in MIOSHA with the little bigger fish and make it difficult for them to operate in darkness, other folks start to decide that maybe it’s not worth it. My vision is we see a lot of that happening in this area too and I just want to hear from you. We thank you all for being here. We offer if you have additional comments as you walk out the door and think about it please don’t forget the tip line and the other numbers here and we’ll just call this meeting closed. Thank you very much.”